IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

CONTEMPT PETITION NO.149 OF 2000

IN

SUIT NO.1653 OF 1992

...

Mrs.Mehru Burjor Dastur ...Petitioner

v/s.

Mrs.Roda Rustom Sethna & Anr. ...Respondents

...

Mr.Rajesh Shah i/b Markand Gandhi & Co. for the Petitioner.

Mr.F.D'vitre with Mr.B.Kamdin i/b Purohit & Purohit for the Respondent No.1.

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CORAM: D.K.DESHMUKH, J.

DATED: 12TH FEBRUARY,2007

P.C.:

1. I have heard the learned Counsel, who was appearing for the Petitioner as also the learned Counsel appearing appearing for the Respondent No.1. The Petitioner is dead. Respondent No.2 is also no more. In my opinion, considering the relationship between the deceased Petitioner and the first Respondent and considering that the Petitioner is no more and the Respondent No.2 is also no more and as the Respondent No.1 has filed an affidavit dated 6-2-2007, petition can be disposed of in following terms:

(i) Respondent No.1 has accepted by affidavit that the room under the stairs on the ground floor of the building is jointly owned by the Petitioner and the Respondent No.1 under clause (8) of the consent terms dated 3rd August, 1999 filed in High Court in Suit No.1653 of 1992 and the Respondent No.1 cannot claim any right of exclusive ownership of that room, and therefore, legal representatives of the deceased Petitioner shall be free to adopt remedy that may be available to them under the law for getting that room

vacated, which according to the Respondent No.1 is presently being occupied by the legal representatives of the deceased Respondent No.2.

(ii) In the affidavit filed by the Respondent No.1 dated 6-2-2007 in paragraph (2) a statement has been made that deceased Respondent No.2 was residing with his family in the room under the stairs on the ground floor since prior to about 1963.

. The correctness of that statement is disputed on behalf of the Petitioner. It is pointed out that the statement is contrary to clause (7) of the consent terms referred to above. It is pointed out that according to the Respondent No.1, deceased Respondent No.2 was the servant who was working in the building, whereas clause (7) of the consent terms mentions that there were two existing servants and clause (7) does not state that any of them were occupying any premises in the building.

(iii) It is made clear that as joint landlord, the legal representatives of the Petitioner shall be free to adopt their remedy for getting the room under the stairs vacated in accordance with law.

(iv) Petition disposed of.

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